

FEDERAL ELECTION COMMISSION

2015 SEP 24 AM 5:09

In the Matter of )

Michael Grimm for Congress )  
and Nancy H. Watkins in her )  
official capacity as treasurer; )  
Michael Grimm; )  
Ofer Biton; )  
Mosdot Shuva Israel Synagogue; )  
Rabbi Yoshiyahu Yosef Pinto; and )  
Unknown Respondents A, B, and C )

MUR 6528

CELA

SECOND GENERAL COUNSEL'S REPORT

I. ACTIONS RECOMMENDED

We recommend that the Commission take the following actions: (1) find reason to believe that Michael Grimm and Michael Grimm for Congress and Nancy H. Watkins in her official capacity as treasurer (the "Committee") knowingly and willfully violated 52 U.S.C. § 30121(a)(2)<sup>1</sup> by soliciting a contribution from a foreign national; (2) approve the attached Factual and Legal Analysis for Michael Grimm and the Committee; (3) enter into pre-probable cause conciliation with Michael Grimm and the Committee.

(4) exercise its prosecutorial discretion to dismiss the allegations that Ofer Biton, Rabbi Yoshiyahu Yosef Pinto, Mosdot Shuva Israel Synagogue, and Unknown Respondents A, B, and C violated the Act, approve the attached Factual and Legal Analyses, and close the file as to them; and (5) send the appropriate letters.

II. INTRODUCTION

On October 30, 2014, this Office recommended that the Commission find reason to believe that Grimm, the Committee, and other Respondents may have engaged in a conduit

<sup>1</sup> On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act") was transferred from Title 2 to new Title 52 of the United States Code.

1 contribution scheme involving foreign national contributions obtained and solicited from  
2 members of Mosdot Shuva Israel ("Mosdot"), a religious organization led by Rabbi Yoshiyahu  
3 Yosef Pinto. On April 22, 2015, the Commission found reason to believe that the Committee  
4 violated the Act "by receiving excessive contributions and contributions made in the names of  
5 others, and by misreporting those contributions in connection with Grimm's 2010 campaign for  
6 U.S. Representative."<sup>2</sup>

7 We conducted an investigation to determine the scope of the Committee's solicitation and  
8 receipt of prohibited contributions.<sup>3</sup> The evidence that we obtained reveals that Grimm and the  
9 Committee solicited and received contributions from individuals whom Grimm knew to be  
10 foreign nationals, and that those contributions, in some cases, were made in the names of others.

11 We recommend that the Commission make a finding of reason to believe that Grimm and the  
12 Committee knowingly and willfully solicited one such foreign national and pursue pre-probable  
13 cause conciliation with them. Regarding Biton, Mosdot, Pinto, and Unknown Respondents A, B,  
14 and C, we recommend that the Commission dismiss the allegations as to them and close the file.<sup>4</sup>

### 15 **III. RESULTS OF INVESTIGATION**

#### 16 **A. Background**

17 The Complaint in this matter alleges that during Grimm's 2010 campaign to represent  
18 New York's 13th Congressional District in the U.S. House of Representatives, Grimm solicited  
19 and the Committee received excessive, foreign national, and false-name contributions from

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<sup>2</sup> Certification ¶ 1, MUR 6528 (Apr. 23, 2015).

<sup>3</sup> *Id.* ¶ 4. The Commission took no action at the time with respect to Michael Grimm, Mosdot, Pinto, and Ofer Biton, a foreign national and Pinto's former top aide.

<sup>4</sup> *See Heckler v. Chaney*, 470 U.S. 821 (1985).

1 members of Mosdot.<sup>5</sup> The Complaint further alleges that, to facilitate his fundraising efforts  
2 with the Mosdot congregation, which maintained a large presence in Grimm's District, Grimm  
3 engaged the assistance of Ofer Biton, a foreign national and top aide to Pinto.<sup>6</sup> The Complaint  
4 also alleges that Biton routinely traveled with Grimm and introduced Grimm to potential donors  
5 from the Mosdot congregation.<sup>7</sup> Some of Pinto's followers stated that they contributed to the  
6 Committee because Biton told them that Pinto wanted them to do so.<sup>8</sup>

7 The Commission held this matter in abeyance from November 2012 through April 2015  
8 while the U.S. Department of Justice ("DOJ") conducted a parallel criminal investigation of  
9 some of the same issues raised in the Complaint, among others.<sup>9</sup> As a result of the criminal  
10 proceedings, Biton, Grimm, and Diana Durand — one of Grimm's fundraisers for the 2010  
11 campaign — all entered guilty pleas to various criminal violations.<sup>10</sup> Only Durand was charged  
12 with violations of the Act.

13 **B. The Investigation**

14 Following the Commission's reason to believe finding in April 2015, we sought to obtain  
15 additional records and information from a variety of sources to determine whether a violation in  
16 fact occurred and the breadth of the conduct.

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<sup>5</sup> Compl. ¶ 5 (Feb. 6, 2012) (citing Alison Leigh Cowan and William K. Rashbaum, *Rabbi's Followers Cast Doubt on Congressman's Fund-Raising*, N.Y. TIMES, Jan. 28, 2012, at A1) (attached to the Complaint as Exhibit 1).

<sup>6</sup> *Id.* ¶¶ 4-6.

<sup>7</sup> *Id.* ¶ 8.

<sup>8</sup> *Id.*, Ex. 1 at 3.

<sup>9</sup> See First Gen. Counsel's Rpt. at 6.

<sup>10</sup> *Id.* at 6-7; Factual Basis for Guilty Plea, *United States v. Grimm*, 1:14-cr-00248 (E.D.N.Y. Dec. 23, 2014).

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4 DOJ served at least three search warrants: two, along with their  
5 supporting affidavits, were made public with some redactions before the Commission's reason-  
6 to-believe finding, and the other was made public in redacted form in July 2015.<sup>12</sup> We obtained  
7 copies of those materials, including a redacted copy of the application for what the parties to the  
8 criminal proceeding have referred to as Search Warrant #1, which previously had been  
9 unavailable to the Commission.  
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<sup>12</sup> See Minute Entry, *United States v. Durand*, 1:14-cr-00247 (E.D.N.Y. Feb. 11, 2015) ("The Court has examined the submissions by the New York Times and the Government and finds there was just cause for the prosecution to keep warrant #1 sealed to continue their investigation of another matter, and for Warrant Nos. 2 & 3 to be redacted."); Government Letter Response to Motion of the New York Times, *United States v. Durand*, 1:14-cr-00247 (E.D.N.Y. July 29, 2015) (requesting that the Court enter a limited unsealing order allowing for public filing of a redacted version of Search Warrant #1). The docket does not reflect that the Court granted the Government's request.

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3 We also attempted to conduct an interview of Biton, who has pleaded guilty to  
4 immigration fraud charges and is awaiting sentencing. Despite our best efforts, to date we have  
5 been unable to obtain any information from him.<sup>13</sup>

6 In addition, we sought records and information directly from a number of possible fact  
7 witnesses. At our request, the Commission approved three subpoenas for the production of  
8 documents and two deposition subpoenas. We obtained and have reviewed approximately  
9 24,000 pages of e-mail and other records from the Committee. And we conducted nine  
10 interviews of witnesses who we concluded may have had personal knowledge of relevant facts or  
11 other possible evidentiary leads.

12 **C. Summary of the Evidence**

13 As described further below, we conclude that the substantial weight of the credible  
14 evidence now before the Commission demonstrates that Grimm solicited contributions from  
15 individuals whom he knew to be foreign nationals, and that he directed some of those individuals  
16 to use intermediaries to disguise the true source of the contributions. Of the several such  
17 solicitations that we have identified, one remains within the presently applicable statute of  
18 limitations period — Grimm's October 17 and 18, 2010 e-mail solicitation of a known foreign  
19 national and seven other people to make contributions to a state party committee. The facts  
20 relating to that October 17 and 18 solicitation and other evidence concerning Grimm's course of

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1 similar conduct reflect that Grimm knowingly and willfully solicited the contribution from a  
2 foreign national in violation of the Act. The investigation further corroborated the Commission's  
3 prior finding that there was reason to believe that the Committee misreported prohibited  
4 contributions, both in connection with the conduit contribution scheme for which Durand  
5 pleaded guilty and concerning the additional foreign national contributions that members of  
6 Mosdot made through intermediaries.<sup>14</sup> The Committee's inaccurate reporting of certain of those  
7 contributions remains actionable under the statute of limitations.

8 1. On Several Occasions During His 2010 Campaign, Grimm Solicited  
9 Known Foreign Nationals to Contribute Through Intermediaries

10 The available evidence reflects that, from the inception of his 2010 candidacy, Grimm  
11 sought to obtain contributions from foreign nationals, sometimes offering assistance in resolving  
12 their immigration status in return, and that he directed those individuals to effect their  
13 contributions through the use of intermediaries.

14 According to the testimony of a federal law enforcement agent submitted in connection  
15 with the government's successful application for a search warrant in the U.S. District Court for  
16 the Eastern District of New York, a foreign national identified as Contributor #1 met with  
17 Grimm in 2009 to explain his difficulties in obtaining immigration status in the United States and

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<sup>14</sup> While as a factual matter our investigation has established that the Committee also knowingly accepted some of these prohibited contributions, that conduct lies outside of the statute of limitations.

1 offered to contribute to Grimm's campaign.<sup>16</sup> According to the agent's affidavit, Grimm  
2 informed Contributor #1 that, as a foreign national, he could not contribute to the Committee, but  
3 that he could provide the funds to third parties who in turn could make the contribution to  
4 Grimm's campaign.<sup>17</sup> Grimm further assured Contributor #1 that he would attempt to help him  
5 obtain immigration status in the United States if he contributed.<sup>18</sup> Approximately one week later,  
6 Contributor #1 provided Grimm with contribution checks made in the names of four others using  
7 Contributor #1's funds and totaling approximately \$20,000.<sup>19</sup> Grimm told Contributor #1 that he  
8 would help him with his immigration issues.<sup>20</sup>

9 Similarly, in late December 2009, Grimm again solicited \$5,000 from a foreign national.  
10 Grimm informed an individual identified as Contributor #2 that it "was 'no problem'" for him to  
11 contribute despite his status as a foreign national.<sup>21</sup> Grimm instructed Contributor #2 to wire the  
12 money to an individual identified as Attorney, a United States citizen whom Grimm had  
13 previously met and who represented Contributor #2 in various business transactions, who would

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<sup>16</sup> Search Warrant #1 ¶¶ 5-8. It appears that the information in Search Warrant #1 on this point is further corroborated by at least two witnesses.

<sup>17</sup> Search Warrant #1 ¶¶ 7-8;

<sup>18</sup> Search Warrant #1 ¶ 8;

<sup>19</sup> Search Warrant #1 ¶ 9;

<sup>20</sup> Search Warrant #1 ¶ 9.

<sup>21</sup> *Id.* ¶ 11;

1 then transfer Contributor #2's funds to the Committee.<sup>22</sup> On December 29, 2009, Contributor #2  
2 wired \$4,978 to Attorney, who used those funds to reimburse contributions to the Committee that  
3 were attributed to two associates in Attorney's law firm.<sup>23</sup>

4 On a third occasion, in 2010, Grimm told a foreign national identified as Contributor #3  
5 that he wanted to help him obtain immigration status in the United States, but that Contributor #3  
6 needed to contribute \$10,000 to Grimm's campaign before Grimm would be willing to do so.<sup>25</sup>

7 On March 26, 2010, Contributor #3 provided \$1,800 to the Committee using a check drafted  
8 from a bank account in the name of a New York corporation in which he is a partner.<sup>26</sup> The  
9 Committee reported receipt of the contribution from the corporation, but attributed it to one of  
10 Contributor #3's business partners, who is a United States citizen.<sup>27</sup>

<sup>22</sup> Search Warrant #1 ¶¶ 11-12:

<sup>23</sup> Search Warrant #1 ¶¶ 11-12;  
(Jan. 30, 2010)

Michael Grimm for Congress, 2009 Year-End Rpt.

<sup>25</sup> Search Warrant #1 ¶ 14.

<sup>26</sup> *Id.*; Michael Grimm for Congress, Second Amend. 2010 Apr. Quarterly Rpt. (Nov. 1, 2010); MGFC\_GJ-0010383 (copy of a check which was produced by the Committee in response to the Commission's subpoena; the signature on the check is indecipherable).

<sup>27</sup> Search Warrant #1 ¶ 14; Second Amend. 2010 Apr. Quarterly Rpt. (Nov. 1, 2010). Although the direct evidence does not establish that Grimm knew about this particular contribution, the record amply supports a reasonable inference that he did, since he solicited Contributor #3 for contributions that he knew the Committee could not receive directly and, in other cases, instructed individuals to contribute in the names of others.



1 In addition to these three instances, witnesses similarly represented  
2 <sup>28</sup> that Grimm sought contributions from other individuals whom he knew to be foreign  
3 nationals, was aware that individuals would contribute through conduits, and offered to intercede  
4 in immigration proceedings and other legal matters if individuals made contributions. A witness  
5 told when an individual who had committed to raising \$20,000 to \$30,000 for the  
6 Committee informed Grimm that "he could not get these people to give Grimm their money  
7 unless [the individual] gave it to them," Grimm responded that "he didn't care." The witness  
8 further reported that Grimm offered to help another contributor to resolve a dispute with the  
9 gaming commission if he contributed to the Committee, and the contributor gave "about  
10 \$20,000, through family members." A different witness asserted that Grimm solicited  
11 contributions from another individual in return for assisting his family with immigration  
12 problems.

13 2. Grimm Solicited a Contribution from a Known Foreign National to a State  
14 Party Committee  
15

16 In addition to the direct solicitations that Grimm made to various members of Mosdot,  
17 Grimm solicited contributions through Rabbi Pinto. Grimm relied on Biton and others to  
18 translate Grimm's spoken and written communications with Pinto into Hebrew, because Pinto

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<sup>28</sup> It is a felony offense to knowingly and willfully make a materially false statement or representation in a matter within the jurisdiction of the executive branch of the federal government, such as a federal law enforcement investigation. *See* 18 U.S.C. § 1001. A false statement is material if it has the "natural tendency to influence or [is] capable of influencing, the decision of the decisionmaking body to which it is addressed." *United States v. Gaudin*, 515 U.S. 506, 510 (1995).

1 speaks no English. On October 17, 2010, Grimm e-mailed Rabbi Pinto's wife, Devorah, and  
2 solicited a \$10,000 contribution on the Committee's behalf to the New York State Republican  
3 Committee ("NY GOP") from Contributor #1, the same foreign national from whom Grimm  
4 previously solicited contributions to the Committee.<sup>34</sup> Grimm wrote, in part:

5 I need your help with the last donations before next week. Last time we  
6 raised money it was very difficult and we worked very hard and the Rabbi  
7 agreed to help raise an additional \$125,000 for this time but I know he has  
8 too much to do and is dealing with very stressful times. I can get the rest  
9 if you and the Rabbi can help me get the last \$60,000 less than half what  
10 the Rabbi originally promised.

11  
12 Please, I must have at least this \$60,000 to pay for the TV commercials for  
13 the last week before the election. I am working so hard to make up the  
14 difference from the \$125,000. This time we only need 3 married people  
15 that can write \$20,000 each or 6 people to write \$10,000 each because  
16 now the money can go to the New York State Republican Committee and  
17 the rule is not \$4,800 but \$10,000.

18  
19 . . . . [Contributor #1] can do \$10,000. . . .  
20

21 Whoever we can get from this list to make \$60,000 right away please.  
22 Check is made out to: New York State Republican Committee[.]  
23

24 Please ask them to fedex the checks to ... [Mosdot] and I will ... pick  
25 them up.<sup>35</sup>  
26

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<sup>34</sup> Search Warrant #1 ¶ 23; E-mail from Michael Grimm to Devorah Pinto (Oct. 17, 2010) ("Grimm Oct. 17 E-Mail").

<sup>35</sup> *Id.*

1 Although in his October 17 e-mail Grimm solicited contributions to be made to  
2 the NY GOP rather than directly to the Committee, his correspondence with Rabbi  
3 Pinto's wife expressly states that the contributions were intended to "pay for the TV  
4 commercials for the last week before the election," thereby benefitting Grimm and the  
5 Committee. The next day, October 18, 2010, in another e-mail to Devorah Pinto, Grimm  
6 reiterated the same solicitation to fund "TV commercials" and stressed their importance  
7 to his own campaign activities:

8 Please let me know if you reviewed my e-mail and if you called anyone on  
9 the list. We have very little time as I need to start collecting checks as  
10 soon as today or tomorrow.

11  
12 I think that if the Rabbi calls the six people and asks them to each write  
13 one check for the \$10,000 then we can finish this in the next few days.

14  
15 Please e-mail me back and let me know if and when those calls will be  
16 made. *I need to send money to the cable TV for the commercials so this is*  
17 *extremely important. . . .*

18  
19 *The last thing I need to do is raise \$190,000 for the 2 weeks of TV*  
20 *commercials and direct mail. I can raise \$120-\$130 but I must have the*  
21 *other \$60,000 as soon as possible. Please e-mail me back as I am very*  
22 *nervous and concerned about the final amounts of money . . . .*

23  
24 Please e-mail or call me as soon as possible and let me know if the Rabbi  
25 spoke to anyone on the list for the checks.<sup>36</sup>

26  
27 We note that Grimm's October 17 e-mail identified seven others besides  
28 Contributor #1 from whom Grimm sought to solicit contributions to the NY GOP.<sup>37</sup> We  
29 were unable to confirm, however, whether any of those individuals were foreign nationals

<sup>36</sup> E-mail from Michael Grimm to Devorah Pinto (Oct. 18, 2010) ("Grimm Oct. 18 E-Mail") (emphasis added).

<sup>37</sup> Search Warrant #1 ¶ 23; Grimm Oct. 17 E-Mail.

1 or whether Grimm would have been aware of that fact, assuming they were. It also  
2 remains unclear whether Rabbi or Devorah Pinto contacted any individual identified in  
3 Grimm's solicitation, including Contributor #1, or whether any of them in fact made a  
4 contribution to the NY GOP during the 2010 election cycle.

5 As explained above, the record also reflects that Grimm well knew that  
6 Contributor #1 was a foreign national. The year before, Grimm had solicited the same  
7 Contributor #1 to make a contribution to the Committee in return for Grimm's offer to  
8 provide that person with assistance in connection with his immigration status. Grimm  
9 further directed Contributor #1 at that time to make contributions through intermediaries  
10 specifically to conceal that the source of the funds was a foreign national.

11 3. Investigative Findings Regarding Conduit Contribution Scheme of  
12 Diana Durand and Allegations Concerning Other Individuals  
13

14 As we previously reported to the Commission, on September 3, 2014, Grimm's  
15 associate, Diana Durand, pleaded guilty to reimbursing approximately \$10,000 in  
16 contributions made to the Committee in the names of others.<sup>38</sup> Durand was described as  
17 Grimm's then-girlfriend and engaged in fundraising activities to benefit Grimm's  
18 campaign. In approximately late March 2010, Durand reimbursed the contributions of  
19 and to the Committee, as well as additional  
20 contributions to the authorized committee of another federal candidate. The Committee's

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<sup>38</sup> See First Gen. Counsel's Rpt. at 7

1 receipt of those reimbursed contributions is well established as a result of Durand's own  
2 sworn admissions in connection with her guilty plea and sentencing.

3 Finally, our investigation did not yield additional evidence either to support or  
4 refute the allegations in the Complaint with respect to Biton,<sup>40</sup> Mosdot, Rabbi Pinto, or  
5 Unknown Respondents A, B, and C. We subpoenaed deposition testimony and  
6 documents from two individuals who worked closely with Pinto and handled Mosdot's  
7 affairs, but were unable to determine from the limited information that they provided  
8 whether Biton, Pinto, or Mosdot may have violated the Act. Despite extensive efforts,  
9 including review of over 24,000 pages of Committee records and e-mail communications,  
10 we also were unable to identify the unnamed individuals whose conduct was described in  
11 the Complaint or establish other facts sufficient to determine whether Unknown  
12 Respondents A, B, or C may have violated the Act in the manner described in the  
13 Complaint.

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<sup>40</sup> One witness recalled discussing with Grimm, Biton, and others whether Grimm might compensate Biton, a foreign national, for the assistance that Biton provided Grimm in fundraising for the Committee by paying Biton a percentage of the funds that he raised, perhaps through his partnership in Grimm's restaurant, Healthalicious.

But the witness had no evidence to show that Grimm in fact paid such a commission to Biton, and we were unable to corroborate or otherwise substantiate the allegation that Biton provided paid assistance as a foreign national to Grimm's campaign. We will inform the Commission if any further discussions with Biton or his counsel while the matter remains open provide relevant additional evidence concerning the appropriate treatment of any allegations in this matter.

IV. ANALYSIS

The information gathered during the investigation to date reveals that, during the 2010 election campaign cycle, Grimm and the Committee solicited and received contributions from several foreign nationals and directed that contributions be made in the names of others and in amounts exceeding the limitations of the Act, consistent with the nature of the allegations described in the Complaint. We recommend that the Commission make a further finding only as to a single foreign national solicitation, as the statute of limitations has expired for the rest of the activity.<sup>41</sup> Specifically, Grimm's October 17 and 18, 2010 solicitation of a known foreign national remains actionable within the limitations period, constitutes a significant violation of the Act premised on clear documentary evidence, and involves activity that is representative of Grimm's course of conduct throughout his candidacy for the U.S. House of Representatives in 2010. Moreover, the Commission's prior finding that there is reason to believe that the Committee failed to report the true source of the contributions made via conduit contributors remains viable as well.

The Act prohibits candidates, committees, and their agents from soliciting, accepting, or receiving a contribution from a foreign national.<sup>42</sup> Commission regulations define "solicit" as "to ask, request, or recommend, explicitly or implicitly, that another person make a contribution,

<sup>41</sup> The fraudulent concealment doctrine in some instances may serve to toll the running of the statute of limitations. *See, e.g., Gabelli v. SEC*, 133 S.Ct. 1216, 1220 n.2 (2013) (noting that the application of fraudulent concealment to toll the statute of limitations is limited to instances where the defendant takes steps beyond the challenged conduct to conceal that conduct from the plaintiff); *SEC v. Wyly*, 950 F. Supp. 2d 547, 555 (S.D.N.Y. 2013) ("[T]he statute of limitations may be tolled on a claim that has already accrued if defendants take steps beyond the 'self-concealing' fraudulent acts to hinder the SEC's investigation and prosecution of the fraud, as opposed to the initial discovery of the fraud."). We have not uncovered any evidence that any Respondent engaged in additional efforts to conceal beyond the "self-concealing" nature of engaging in a conduit contribution scheme. We do not anticipate that further investigative efforts would likely elicit such information.

<sup>42</sup> 52 U.S.C. § 30121(a)(2).

1 donation, transfer of funds, or otherwise provide anything of value.”<sup>43</sup> The statutory proscription  
2 against soliciting, accepting, or receiving a foreign national contribution is stated in the  
3 disjunctive. Consequently, the legal prohibition against soliciting a foreign national applies  
4 without regard to whether that solicitation in fact caused a foreign national to make a  
5 contribution.<sup>44</sup>

6 In his October 17, 2010 e-mail, Grimm expressly solicited a \$10,000 contribution to the  
7 NY GOP from Contributor #1. The e-mail was sent to Devorah Pinto, Rabbi Pinto’s wife, and  
8 requested that she and Pinto “help [Grimm] get the last \$60,000.” Grimm wrote to Devorah  
9 Pinto again the next day, stressing the importance of the contributions to his campaign efforts,  
10 and asking for confirmation that either she or Rabbi Pinto in fact passed Grimm’s solicitation of  
11 a contribution from Contributor #1 to that person. Because Pinto facilitated Grimm’s previous  
12 solicitation of contributions from Contributor #1, and because the relevant e-mail exchange  
13 itself reflects that Pinto had committed to assist Grimm with additional fundraising, Grimm had

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<sup>43</sup> 11 C.F.R. § 110.20(a)(6).

<sup>44</sup> 52 U.S.C. § 30121(a)(2) (unlawful for “a person to *solicit*, accept, or receive a contribution . . . from a foreign national”) (emphasis added); *see also* Advisory Op. 1980-139 (Agway) (solicitation of persons outside of solicitable class would violate the Act, despite measures to prevent the receipt of any such resulting contribution); *United States v. Urban*, 140 F.3d 229, 232 (3d Cir. 1998) (“[C]anons of construction ordinarily suggest that terms connected by a disjunctive be given separate meanings unless the context dictates otherwise.”). Nothing in the context in which the term “or” is used in this provision suggests that it should be construed other than in its ordinary disjunctive sense.

1 reason to be confident that the Pintos would forward the solicitation of Contributor #1 to that  
2 person on his behalf.<sup>46</sup>

3 The record also reflects that Grimm knew that Contributor #1 was a foreign national.  
4 When he met Contributor #1 in 2009, Grimm offered to help him obtain immigration status in  
5 the United States in return for contributing to Grimm's campaign, and indeed directed  
6 Contributor #1 to use intermediaries to conceal that the contribution came from a foreign  
7 national so that the Committee could accept it.

8 Grimm was also aware that the Act prohibited soliciting or receiving contributions from  
9 foreign nationals and simply disregarded the prohibition. A violation of the Act is knowing and  
10 willful if the "acts were committed with full knowledge of all the relevant facts and a recognition  
11 that the action is prohibited by law."<sup>47</sup> This standard does not require knowledge of the specific  
12 statute or regulation that the respondent allegedly violated.<sup>48</sup> Instead, it is sufficient to  
13 demonstrate that a respondent "acted voluntarily and was aware that his conduct was  
14 unlawful."<sup>49</sup> The facts here readily satisfy that standard: Grimm expressly instructed  
15 Contributor #1 and other foreign nationals that they could not contribute unless they concealed  
16 the true source of their contributions by using intermediaries to make them.

<sup>46</sup> That Grimm directed the Pintos to convey his solicitation of Contributor #1 to him — intermediaries whose assistance Grimm understood made it more likely that Contributor #1 would respond favorably — does not alter the fact that Grimm expressly solicited Contributor #1 to make a contribution.

<sup>47</sup> 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

<sup>48</sup> *United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish that a violation is willful, the government needs to show only that the defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

<sup>49</sup> *Id.* (citing jury instructions in *United States v. Edwards*, No. 1:11-CR-161 (M.D.N.C. May 18, 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. June 2, 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. Oct. 7, 2005)).



1 For all of these reasons, we therefore recommend that the Commission find reason to  
2 believe that Grimm and Michael Grimm for Congress and Nancy H. Watkins in her official  
3 capacity as treasurer<sup>50</sup> knowingly and willfully violated 52 U.S.C. § 30121(a)(2).<sup>51</sup>

4 The evidence obtained during our investigation further corroborates the Commission's  
5 prior finding that there is reason to believe that the Committee failed to accurately report the  
6 receipt of excessive contributions and contributions made in the names of others.<sup>52</sup> As noted, the  
7 Committee received \$9,600 in contributions that Durand has since acknowledged reimbursing,  
8 and the Committee did not accurately report Durand as the source of those contributions.<sup>53</sup> The  
9 Committee also failed to accurately report its receipt of \$26,000 in contributions from  
10 Contributors #1, #2, and #3, foreign nationals whose contributions were attributed to  
11 intermediaries. Several of those reporting violations remain actionable within the relevant  
12 limitations period.<sup>54</sup> Accordingly, we also recommend that the Commission enter into pre-

<sup>50</sup> Nancy H. Watkins was not the designated treasurer of Michael Grimm for Congress at the time of the activities at issue. We therefore do not make any recommendation concerning her in her personal capacity.

<sup>51</sup> Although the Committee was not the intended recipient of the particular contribution that Grimm solicited, he requested the contribution in his capacity as the Committee's agent and expressly sought to benefit the Committee's election-related activities by funding media advertisements in advance of the election. *See* Grimm Oct. 17 E-Mail; Grimm Oct. 18 E-Mail.

<sup>52</sup> Certification ¶ 1, MUR 6528 (Apr. 23, 2015).

<sup>53</sup> *See, supra* note 38; *see also* Michael Grimm for Congress, 2nd Amend. 2010 Apr. Quarterly Rpt. (Nov. 1, 2010)

<sup>54</sup> As discussed above, Durand admitted that she was the source of contributions to the Committee made in the names of

*See* Michael Grimm for Congress, 2nd Amend. 2010 Apr. Quarterly Rpt. (Nov. 1, 2010). On March 26, 2010, the Committee received a foreign national contribution that was inaccurately attributed to *See* Search Warrant #1 ¶ 14; Second Amend. 2010 Apr. Quarterly Rpt. (Nov. 1, 2010). The Committee inaccurately reported the source of these contributions in its April 2010 Quarterly report, the operative version of which was filed on November 1, 2010. 2nd Amend. 2010 Apr. Quarterly Rpt. (Nov. 1, 2010).

1 probable cause conciliation with Michael Grimm for Congress and Nancy H. Watkins in her  
2 official capacity as treasurer as to those reporting violations.

3 Finally, as noted above, our investigation has not yielded additional evidence regarding  
4 the Complaint's allegations that Biton, Mosdot, Pinto, and Unknown Respondents A, B, and C  
5 violated the Act. We believe that further investigation relating to those allegations would not be  
6 warranted given the current limitations status concerning the conduct that we affirmatively have  
7 uncovered. Accordingly, we recommend that the Commission dismiss the allegations as to those  
8 Respondents.<sup>55</sup>

<sup>55</sup> See *Heckler*, 470 U.S. at 821. As noted, to the extent we obtain additional material information from Biton, we will advise the Commission accordingly prior to its resolution of this matter.

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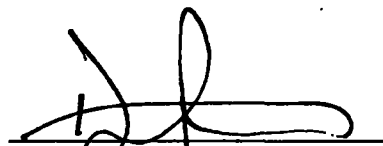
**VI. RECOMMENDATIONS**


1. Find reason to believe that Michael Grimm knowingly and willfully violated 52 U.S.C. § 30121(a)(2);
2. Find reason to believe that Michael Grimm for Congress and Nancy H. Watkins in her official capacity as treasurer knowingly and willfully violated 52 U.S.C. § 30121(a)(2);
3. Enter into pre-probable cause conciliation with Michael Grimm and Michael Grimm for Congress and Nancy H. Watkins in her official capacity as treasurer,
4. Dismiss the allegations that Ofer Biton, Rabbi Yoshiyahu Yosef Pinto, Mosdot Shuva Israel Synagogue, and Unknown Respondents A, B, and C violated the Act and close the file as to them;
5. Approve the attached Factual and Legal Analyses; and


<sup>59</sup> Although the Committee's cash on hand is \$58,019.84, according to its 2015 July Quarterly Report, it also reported \$421,788.41 in debts and obligations.

6. Approve the appropriate letters.

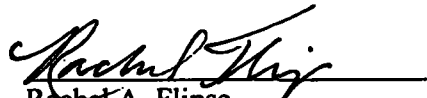
Date: September 24, 2015

  
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